

# BOLTER

## General Terms of Business

These are our **general terms of business**, which explain how we provide our services to **you**, our client (your details will be in our **engagement letter** with you, as explained in these terms), and to the general terms that apply to the supply of those services.

# 01

# Introduction

# Section 01, Introduction

## Who are we, and what are these terms about?

**We** are BOLTER DESIGN LLP, a limited liability partnership registered in England and Wales under number OC402696, and our registered address is at High Park Farm High Park, Kirkbymoorside, York, North Yorkshire YO62 7HS. These are our **general terms of business**, which explain how we provide our services to **you**, our client (your details will be in our **engagement letter** with you, as explained below), and the general terms that apply to the supply of those services.

## Where will you find help understanding these terms?

We have tried to use plain English wherever possible; however, these general terms form part of the contract that we enter into with you in relation to each project we carry out for you, so we occasionally have to use some legal or technical wording. A glossary of terms with special definitions is included in appendix 1; this explains the terms used or, where terms are defined elsewhere in these general terms, where to find the relevant definitions; the appendix also explains some rules to help understand how these general terms are expected to apply. Where a particular term is defined, and is used for the first time, **it will appear like this.**

02

# Engagement letters and services to be supplied

## Section 02, Engagement letters and services to be supplied

### What services do these general terms apply to?

These general terms apply to the supply of services by us, as described in an **engagement letter**, which is a document (or set of documents) containing a description of:

The person (you, our client) to whom the services are to be supplied.

- The **services** to be supplied by us.
- The plan for delivery of the services, including any proposed time scales (the project plan).
- The charges for the services (the **charges**).
- Any changes to these general terms.
- Any other specific terms which are not already set out in these general terms, and which are intended to apply to the supply of the services concerned.

The intention is that the engagement letter will be set out in writing, discussed and agreed, and signed by us and by you to confirm that it has been agreed.

### What is the effect of the engagement letter?

Each engagement letter will form a separate **contract** between us and you (the **parties** to the contract), on the terms set out in the engagement letter and in these general terms; except to the extent that the engagement letter specifically says otherwise, these general terms are to be treated as being incorporated into (and to form part of) the engagement letter; so, when we refer to the **engagement letter**, we mean the **engagement letter including these general terms**.

### What if we want to change any of these general terms?

If we agree with you to change any of these general terms as they apply to an engagement letter, then the change concerned will be specified in that engagement letter; if there is any conflict between the specific terms of the engagement letter and these general terms, then the specific terms of the engagement letter will apply in preference to these general terms to the extent of the conflict concerned.

## When does each engagement letter come into effect?

Each engagement letter will be treated as coming into effect on (and lasting from) the date specified in the engagement letter (the effective date); if the **effective date** is not specified in the engagement letter, then it be treated as being the date on which a copy signed by us is sent to you for signature.

## What if you ask us to start work before you have signed the engagement letter?

If we send you an engagement letter signed by us (together with a copy of these general terms) and ask you to sign and return it, then if, before you have signed it, we start work on the relevant project at your request, you will be treated as having agreed the terms of the engagement letter, and that engagement letter and these general terms will form the terms of the contract between us in relation to the provision of the relevant services.

## How long will each engagement letter last?

Each engagement letter will remain in effect until it is terminated in accordance with its terms; some terms relating to termination are set out in these general terms, and these may be overridden or supplemented by the specific terms of the engagement letter; the period during which the engagement letter remains in effect will be referred to as the term, and the date on which it terminates will be the **termination date**.

## Will each engagement letter be treated separately?

Except to the extent provided otherwise by the specific terms of each of the engagement letters concerned, termination of an engagement letter will not affect any other engagement letter, each of which will continue in effect until separately terminated.

# 03

## The supply of services

## Section 03, The supply of services

### Where will you find a description of the services to be provided?

The services to be provided will be as described in the engagement letter; as well as describing the services, the engagement letter may also include terms which are specific to those services, such as:

- A project plan.
- Specific standards that the services are expected to achieve.
- Things that we need you to do to help us provide the services.
- Specific exclusions from the services.

We will only have to provide you with services to the extent that they are described in the engagement letter. The provision of any services not described in the engagement letter will be subject to separate agreement and may be subject to additional charges.

### When will the services be provided?

The services will be provided at the times and during the hours specified in the engagement letter; if no hours are specified in the engagement letter, the services will be provided during working hours; provision of services outside working hours may involve additional charges, although these will be agreed with you in advance of the relevant services being provided.

### What deliverables should you expect to receive?

In most cases, the end result of each project is the delivery to you of a final set of digital files in different formats, for use by you in applying the design assets we have developed for you as part of the project. The digital files may include, for example, graphic designs for various aspects of your branding in RGB and CMYK formats for different types of use by you. Any such item will be referred to as a **deliverable**. Each proposed deliverable will be described in the engagement letter, and we will only have to provide you with deliverables as described in the engagement letter. Unless specified otherwise in the engagement letter, deliverables will be supplied in digital format only. Before supplying you with the deliverables, we may supply you with drafts for your approval; these drafts are provided for approval purposes only (and not for use for any other purpose), and will not themselves be treated as deliverables (so any assignments or licences of copyright relating to deliverables will not apply to the drafts).

## How will we all be expected to co-operate?

Effective co-operation between the parties will be important to the successful provision of the services; each party agrees:

- To use all reasonable endeavours, consistent with its other obligations under the engagement letter, to enable and facilitate the timely and effective delivery of the services in accordance with the engagement letter; and
- To co-operate with the other party and to provide all assistance reasonably requested by the other party as necessary to achieve the timely and effective delivery of the services in accordance with the engagement letter.

There is a review and approval process for deliverables, which is described below and in appendix 2 to these terms.

## What other help will we need from you?

You will provide or arrange for the provision of:

- A prompt response under the review and approvals process for deliverables.
- Reasonable access to, and reasonable co-operation by, your staff.
- Reasonable access to your premises.
- Any other facilities or information reasonably requested by us.

In each case, this will be to the extent reasonably necessary in order to enable and assist us to provide the services; this will be provided within a reasonable time of any request by us and (unless the engagement letter specifies otherwise) without charge.

## What if we have to provide services at or from your premises?

If in order to provide the services it is necessary for our staff to visit your premises, we will ensure that our staff observe any health and safety rules and any other reasonable security or other requirements that apply at the premises and that you have communicated to us in writing beforehand.

## What about approvals and consents from you?

Where something is subject to your approval or consent (for example, a deliverable that has to be approved by you), you will provide that approval or consent (or notify us that the approval or consent is being withheld) as quickly as reasonably possible; appendix 2 of these terms contains a review and approvals process for use where nothing specific to that effect has been agreed in the engagement letter. To the extent that an applicable process requires approvals or consents to be provided within a specified time, you will provide them (or notify us that they are being withheld) within that time; if you withhold approval or consent, you must at the same time tell us why, and provide us with an explanation sufficient to enable us to understand what the problem is; you understand that we may not be able to rectify any relevant problem (assuming that it is otherwise our obligation to do so) without a reasonable explanation for why you have refused approval or consent.

## What if you give approval to go to print with something?

If we send you something for approval by you before it goes to print, it is very important that you check it carefully before giving your approval, as we will be relying on you to identify any defects or issues or anything else that is not as you expect it to be, before it goes to the printers. We will tell you if you are being asked to approve something to go to print; once you have given your approval for the relevant deliverable to go to print, then if any mistakes or other issues are subsequently identified which mean that it has to be amended and re-printed, you will be responsible both for the cost of the original printing, and the costs of the re-printing, and we will not be liable for any of those costs.

## What should you do if there is a problem with the services we provide?

If you become aware of any problem with the provision of the services (including any problem arising from our behaviour or our compliance with our obligations under the engagement letter), then you must raise the problem concerned with us as soon as reasonably possible, and explain and discuss the problem and co-operate with us in order to try and agree a resolution to the problem concerned; each party will act reasonably, fairly and in good faith in trying to resolve any problem in relation to the services, and this will include using the dispute resolution procedure in these terms in appropriate circumstances.

## How should changes be made to the services, deliverables or engagement letter?

Either party may propose changes to the services and/or the deliverables or otherwise to the engagement letter, but no proposed changes shall come into effect until a relevant change order has been signed by both parties; a **change order** is a document (or set of documents) setting out the proposed changes and the effect (if any) that those changes will have on the

- Services.
- Deliverables.
- Charges.
- Project plan.
- Other terms of the engagement letter.

If the parties agree to a change order, they will sign it and the change order will then amend the engagement letter to the extent set out in the change order. A change order will normally be expected to be a separate document (for example, in the form of an amended engagement letter) to be signed by the parties, but may be agreed by exchange of emails if the proposed changes are straightforward and this method is specifically agreed between the parties at the time in relation to the particular change order; in order for an exchange of emails to be treated as a change order, this intention must be specifically confirmed by both parties (not just one of them) in the exchange of emails concerned.

04

# Charges and payment terms

## Section 04, Charges and payment terms

### How are our charges calculated?

The charges for services to be provided under the engagement letter will be set out in the engagement letter. If the engagement letter does not specify the charges in relation to any specific services, then the services concerned will be charged for on a time and materials basis in accordance with our current rate card, with the charges being due monthly in arrears; our current rate card will be included in the engagement letter or otherwise provided to you before the start of the relevant work; charges under the rate card will be due monthly in arrears.

### Are the charges affected by your selection of alternative designs or formats?

If, as part of the services, we provide you with alternative designs or formats from amongst which you can select which you wish to proceed with or use, then the fact that you do not proceed with, or do not use, any particular designs or formats does not entitle you to a refund or rebate of any charges, which will remain due in full as set out in the engagement letter.

### What about third party charges?

Any third-party charges to be incurred by us (for example, charges by our licensors or sub-contractors) and that we are passing through to you will be set out in the engagement letter, or otherwise agreed with you in writing. Any third-party charges (for example, licence fees for third party software or other material) incurred by us that are not specified in the engagement letter will be included within our charges, and not separately chargeable to you.

### What about out-of-pocket expenses?

Unless the engagement letter says otherwise, our charges will not include reasonable out-of-pocket expenses incurred by us in the provision of the services. We may incur out-of-pocket expenses not exceeding in aggregate 10% of the ex-VAT charges under the relevant engagement letter without specific authorisation from you but, otherwise, we will not incur out-of-pocket expenses without first agreeing these with you in writing. Subject to provision of copies of relevant receipts, out-of-pocket expenses will be chargeable by us in addition to the charges and will be due monthly in arrears. These expenses may include travelling expenses to and from your premises where our staff are required to be at your premises for the purpose of provision of the services; expenses incurred will be in accordance with your normal expenses policy, if you have one, if this has been agreed with us beforehand and is specified in the engagement letter.

## When will we invoice, and when must invoices be paid by?

Our charges, third party charges and out-of-pocket expenses will be due as set out in the engagement letter, or (in the case of charges on a time and materials basis under the rate card) as above; we may invoice for the charges and expenses when they become due; you must pay our invoices within thirty days of receiving them. You should check our invoices when you receive them to make sure that they are correct and, if you have any questions regarding an invoice, you should raise them with us as soon as reasonably possible to enable us to resolve them.

## May we charge interest in the event of late payment?

If you are late in paying any of our invoices, we may charge interest on all unpaid amounts; interest will be due from the date of the invoice until the date of payment and will continue to be due and payable even if we obtain a judgment from a court in relation to any claim for payment of the invoice; the rate of interest per year will be the statutory rate.

## What about VAT?

Charges and expenses are ex-VAT (or any other relevant taxes on supplies) unless specified otherwise in the engagement letter; subject to presentation of an appropriate VAT invoice, you must pay VAT (or other relevant taxes) in addition to the amounts concerned.

# 05

## Warranties in relation to the services

## Section 05, Warranties in relation to the services

### What general warranties do we provide?

We warrant that the services will be provided by us:

- With reasonable care and skill.
- By means of appropriately qualified and experienced personnel.
- In accordance with [good industry practice](#).
- In all material respects in accordance with the description of the services concerned specified in the engagement letter, and otherwise in accordance with the terms of the engagement letter.
- In accordance with any timescale specified in the project plan or, if no timescale is specified, within a reasonable time.

### What about specific warranties set out in the engagement letter?

The engagement letter may specify some other warranties in addition to those set out above and, in that case, the services will be provided in accordance with the specific warranties concerned.

### What if you are subject to regulation?

If your business is subject to regulation relating, for example, to your goods or services or to how you market or sell them (for example, regulation relating to food and drink for human consumption, cosmetics, financial services, pharmaceuticals or medical devices, advertising, marketing or packaging) then, unless the engagement letter says otherwise, to the extent that the regulation is applicable to the services or deliverables that we provide, or to your use of them, you will be responsible for ensuring that the services and deliverables may be used by you in a way which complies with the relevant regulation, and (if required) you will provide reasonable advice and assistance to us accordingly. For example, we may provide design assets for your packaging, but you will remain responsible for ensuring that the packaging (incorporating the design assets) complies with any relevant regulation (for example, use of, or legibility or prominence of, any particular wording).

## What should you do if you think there has been a breach of warranty?

If you think that there has been a breach by us of any warranty or other term of the engagement letter: you must notify us as soon as possible once you become aware of the breach concerned, and provide us with reasonable detail about why you believe a breach has occurred; and before you exercise any other right or remedy in relation to the breach (and irrespective of whether you have notified us of the breach of warranty or not), you must give us a reasonable opportunity to rectify the breach, if we think necessary by repeating the provision of the relevant services without additional charge and provided that we do so within a reasonable time.

## Will any other warranties or other terms apply?

Except as expressly set out in these general terms or the engagement letter, and subject to the paragraph headed *What liability is not subject to exclusions or limitations?* below, we do not give or enter any condition, warranty or other term about the services or their provision, and all such other conditions, warranties, or other terms (including any which might otherwise be implied by law) are excluded.

06

# Apportionment of risk and limitation of liability

## Section 06, Apportionment of risk and limitation of liability

### What is the purpose of this section of the general terms?

This section of the general terms explains what exclusions and limitations apply to each party's liability arising under or in relation to each engagement letter, and therefore how the risk of loss or damage in relation to an engagement letter is shared between the parties; this section applies to you as well as to us.

### What liability is not subject to any exclusions or limitations?

No exclusions or limitations apply to either party's liability:

- For death or personal injury caused by its negligence.
- For fraud, or fraudulent misrepresentation.

### What types of loss are excluded from liability?

Subject to the paragraph above relating to liabilities that are not excluded, neither party shall be liable for damages or any other form of compensation, whether liability arises due to breach of contract, negligence, misrepresentation or for any other reason, in respect of any of the following types of loss:

- Loss of profit or revenue (except where the engagement letter is wrongfully terminated by you, in which case this will not exclude any claim that we might otherwise have had for loss of profit or revenue arising from the relevant breach of contract by you).
- Loss of, or damage to, goodwill.
- Loss of, or damage to, software or data, or loss of use of software or data.
- Indirect, consequential or special loss (regardless of whether the party concerned was aware, or ought reasonably to have been aware, that any such loss might arise).

## What are the general limits on the liability of each party?

Subject to the paragraphs headed *What liability is not subject to any exclusions or limitations?* and *What types of loss are excluded from liability?* above and *What are the limits on the liability of each party under an indemnity?* below, the aggregate liability of each party under or in relation to each engagement letter, and whether that liability arises due to breach of contract, negligence, misrepresentation or for any other reason, but not if the liability arises under an express indemnity in the engagement letter (including in these terms), shall be limited to an amount equal to 100% of the charges under the engagement letter (provided that if the services under the engagement letter are to be provided on a recurring periodic basis, then to an amount equal to 100% of the charges due in respect of the initial term of the engagement letter or, if there is no initial term, the first 6 months of the term of the engagement letter); in addition, the total aggregate liability of each party to the other under all engagement letters together will not exceed £1 million.

## What are the limits on the liability of each party under an indemnity?

The aggregate liability of each party under or in relation to any express indemnity set out in the engagement letter (including in these terms) will not exceed £500,000; in addition, the total aggregate liability of each party to the other any express indemnity together with any other claims under all engagement letters together will not exceed £1 million.

## How long does each party get to notify the other of a claim?

Subject to the paragraph headed *What liability is not subject to any exclusions or limitations?*, above, any claim by either party under or in relation to the engagement letter must be notified to the other party in writing (providing at the same time reasonable details of the claim concerned, including the nature and extent of any loss or damage suffered as a result, so far as it is known at the time) within three years of the end of the month in which the claim arose, otherwise the claim concerned may no longer be made.

## Will we be covered by insurance?

We will take out and maintain, throughout the term of the engagement letter, and for at least three years after the termination date of the engagement letter, professional indemnity insurance (covering our negligence and breach of the engagement letter in the performance of our services) with a reputable UK-based insurance company to a limit of not less than GBP 1 million per claim. On request from you, we will provide you with written confirmation from our broker or the relevant insurance company that the relevant insurance is in force.

## Who are we liable to, and who is liable to you?

Unless and to the extent specifically set out in the relevant engagement letter:

We do not owe, nor do we accept, any duty to any person other than you, the person named as our client in the engagement letter; and We do not accept any liability or responsibility for any consequence arising from reliance upon our services by any person other than you.

Our duty to you does not extend beyond the contractual duty arising from those instructions and the scope of work. No member, consultant, or employee of Bolter Design LLP contracts with you personally or assumes legal responsibility to you personally in respect of work performed by us. Your sole recourse is against Bolter Design LLP, and any judgement or award may only be enforced against the available assets of Bolter Design LLP, and not against any other assets, including the assets of any member, consultant, or employee of Bolter Design LLP.

## How long does each party get to notify the other of a claim?

Subject to the paragraph headed What liability is not subject to any exclusions or limitations?, above, any claim by either party under or in relation to the engagement letter must be notified to the other party in writing (providing at the same time reasonable details of the claim concerned, including the nature and extent of any loss or damage suffered as a result, so far as it is known at the time) within three years of the end of the month in which the claim arose, otherwise the claim concerned may no longer be made.



# Confidentiality and data protection

## Section 07, Confidentiality and data protection

### What are the parties' obligations with regard to confidentiality?

We will keep confidential any confidential information which you provide to us in connection with the engagement letter and you will do the same in relation to any confidential information which we provide to you. Confidential information will include all information marked as being confidential and any other information which ought reasonably to be assumed to be confidential (whether due to its nature, the circumstances in which it is disclosed or otherwise). These obligations as to confidentiality will not apply to any information which is:

- Available to the public other than because of any breach of these terms.
- When it is provided, already known to whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others.
- Independently obtained by whomever it is disclosed to in circumstances in which they are not prevented from disclosing it to others.
- Required to be disclosed by law or by any court or tribunal with proper authority to order its disclosure.

### How will personal data be dealt with?

Each party will comply with its obligations under applicable law in relation to the processing of personal data by it in connection with the provision of the services. It is not normally the case that we would process any personal data on behalf of a client but, in the event that we agree to do so in relation to a given project, appropriate terms (including a data processing agreement) will be agreed as part of the relevant engagement letter.

08

# Termination of the engagement letter

## Section 08, Termination of the engagement letter

### When will the engagement letter terminate automatically or on notice?

The engagement letter will terminate, or may be terminated, as follows:

- In accordance with any specific right to terminate it set out in the engagement letter.
- If the engagement letter relates solely to a discrete project which, once it is completed, will not involve any ongoing services being provided under the same engagement letter, the engagement letter will terminate automatically once each party's obligations under the engagement letter have been fulfilled, unless it is extended by agreement between the parties.

If the engagement letter relates to services which are provided on a recurring periodic basis (for example, where services are provided for an initial period and then for successive recurring renewal periods until terminated, or where services are provided on a month-by-month basis until terminated) then, except as specified otherwise in the engagement letter, the engagement letter may be terminated by either party by giving not less than three months' notice to the other, such notice to expire at the end of the initial period (if there is one) or any succeeding renewal period (if there is one).

### When can the engagement letter be terminated because of insolvency?

Either party may terminate the engagement letter immediately by notice to the other party if the other party suffers an **insolvency event**.

### When can a party terminate because of breach (other than non-payment)?

Either party may terminate the engagement letter immediately by notice to the other party if:

- The other party materially breaches any term of the engagement letter concerned and it is not possible to remedy that breach; or
- The other party materially breaches any term of the engagement letter concerned and it is possible to remedy that breach, but the other party fails to do so within thirty days of being asked to do so.

This clause will not apply to any breach that arises solely from non-payment by you, which shall be governed instead by the clause below.

## When can we terminate because of non-payment?

We may terminate the engagement letter immediately by notice to you if:

- You have failed to pay any sum due under the engagement letter by the date on which it is supposed to have paid in accordance with the engagement letter;
- We have notified you that the sums are overdue and that, if they remain unpaid for a further fourteen days, we intend to terminate the engagement letter: and
- The sums remain unpaid for a further period of fourteen days following the date of the notice from us as set out above.



# Consequences of termination

## Section 09, Consequences of termination

### What happens to the parties' accrued rights on termination?

Termination of the engagement letter will not affect any accrued rights or liabilities which either party may have under or in relation to the engagement letter by the time termination takes effect.

### What is the effect of termination of the engagement letter?

On termination of an engagement letter:

- Except as specified otherwise by the engagement letter or these terms, any licences granted or procured under or in accordance with the engagement letter in relation to any deliverables that are, or have been, delivered to you and by the date of termination and which are paid for by you will remain in effect (and will not terminate). Otherwise, any relevant licences will end on the termination date.
- Each party shall return to the other any confidential information provided by the other or (at the other's option) destroy it and confirm in writing that this has been done.
- We will cease provision of the services provided under the engagement letter.

# 10

# Intellectual property rights

## Section 10, Intellectual property rights

### What intellectual property rights apply in relation to the deliverables, and what will this mean?

The deliverables will normally be things in which **copyright** subsists; except to the extent that the copyright in the deliverables is assigned to you, you will need a license to use the deliverables.

### If copyright in deliverables is being assigned to you, how will this work?

If the copyright in the deliverables is being assigned to you, this will be set out in writing in the engagement letter; an assignment of copyright in the deliverables that is contained in the engagement letter will not (unless the assignment concerned specifically says otherwise) include any assignment of copyright in: any **typefaces** or **fonts**; any of **your material**; any **third-party material**; or any of **our background material**. How these things are dealt with is explained in more detail below; the copyright in typefaces, fonts, our background material, and any third-party material licensed to us for use by you is reserved to us or our licensors and will (to the extent the material forms part of the deliverables and it is necessary to allow you to use them appropriately) be licensed rather than assigned to you as set out below.

### If copyright is not being assigned to you, how will you be licensed to use the deliverables?

To the extent that the copyright in the deliverables is not assigned to you in the engagement letter, and subject to the exceptions explained below in relation to:

- Typefaces and fonts;
- Your material;
- Third-party material; and
- Trade marks and brand rights;

you will have a non-exclusive license under the relevant copyright to:

- Copy and adapt, or allow others to copy or adapt on your behalf;
- Communicate to the public; and
- Otherwise use;

the deliverables for the purpose for which they were produced by us for you under the engagement letter; except in some cases where a font licence is required to use the deliverables or where your material, third-party material, or any trade marks or brand names are incorporated into the deliverables (in relation to which, see below), this licence will not be subject to any additional charges and will not be limited in time.

## How are typefaces and fonts dealt with?

### What are typefaces and fonts?

A **typeface** is a set of alphabetical characters, numbers, and other characters that all have the same design; so, the text in these general terms of business is in a particular typeface; a **font** was, when printing was mostly done using metal on paper, the set of metal letters, numbers and other characters in a particular typeface that was assembled into different words in order to produce printed works; these days, a **font** is more often the piece of software that allows characters to appear on screen, or be printed out, in a particular typeface; so, for example, there is a font incorporated into the word processing application that allowed this document to be produced in the relevant typeface.

## How are typefaces and fonts dealt with?

You may need to obtain a licence to use a font in order to reproduce a deliverable incorporating a typeface. Depending on the typeface and what you want to use the deliverable for, you may already have an appropriate font licence, for example because it will be included in the software application that you are using in order to use the deliverable; however, for some typefaces, or for some types of use, you may need to obtain an additional font licence. One example of this is in relation to websites; if you are intending to use a deliverable

incorporating a typeface as part of a website, then you may need to obtain a font licence appropriate to that typeface in order to allow you to do so. Similarly, while some applications include fonts and font licences for common typefaces, they do not necessarily include fonts for all typefaces, and the font and an associated licence will have to be purchased and separately downloaded. Where a separate font licence will be needed to allow use of the deliverable for a particular purpose (such as a website), we will notify you that this is the case and, unless specified otherwise in the engagement letter, you will be responsible for obtaining and paying separately for any such font licence.

## How is your material dealt with?

**Your material** is any material that you provide to us, or arrange for someone else to provide to us, for incorporation into a deliverable; this includes things like your business name, product names or other brand-related material, or any third-party material, that you provide to us or obtain a licence for, so that we can use it in providing our services. You are responsible for ensuring that we are licensed to incorporate any of your material (including any relevant third-party material) into a deliverable, and for ensuring that you are then licensed to use any such material as part of the relevant deliverable; this includes clearing the copyright and trade mark rights in relation to the material concerned. We shall not be responsible for the licensing or use of, or quality of, any of your material.

## How is third-party material dealt with?

### What is third-party material?

**Third-party material** is any material which is incorporated into a deliverable, where the copyright or other intellectual property rights in the material concerned are owned or controlled by a third party (but excluding any typefaces or fonts, or any material in which you own or are licensed by a third party to use the relevant intellectual property rights, which are dealt with separately). For example, stock images may be incorporated into a deliverable under licence from the relevant stock library.

## What if third-party material is provided, or contracted for, by you?

Third-party material may be provided or otherwise obtained by you (in which case it forms part of your material, as explained above); third-party material that is provided or licensed under a contract between the third party and you will always form part of your material, and you will be responsible for ensuring that it may be used in the production of deliverables or otherwise in relation to the provision of the services.

## What if third-party material is provided, or contracted for, by us?

To the extent that third-party material is provided or contracted for by us, then we will only incorporate any such third-party material into a deliverable to the extent that we have:

- Notified you of the third-party material concerned.
- Obtained your consent to use the third-party material.
- Provided you with details of any relevant licence of the third-party material applicable to the deliverable concerned.

You may only use a deliverable incorporating any such third-party material in accordance with any relevant licence terms that are notified by us to you, including any limits on the period during which you may use the third-party material concerned (and you must not use the deliverable other than in accordance with those terms). If there are any additional costs to be incurred in relation to the use of the third-party material provided by us, these will be set out in the engagement letter, which will specify who is responsible for the additional costs concerned. If the engagement letter does not specify the costs to be incurred in relation to third-party material being provided by us, together with who is responsible for them, then the costs concerned will be borne by us and will be treated as having been included in our charges.

## How is our background material dealt with?

Our **background material** is any material the copyright to which is owned by us or our licensors and which either

- Already exists by the date of the relevant engagement letter with you and which we use (or intend to use) generally in our work (that is, for more than one client); or
- Is provided to you in draft format for you to select which designs to proceed with from amongst alternatives, or otherwise for approval by you; draft designs that are provided to you but which it is decided will not be proceeded with will remain part of our background material.

The copyright in our background material will be retained by us, even if the copyright in any relevant deliverable is assigned to you under the engagement letter, but if and to the extent that any background material is incorporated into a deliverable, then you will be licensed to use the background material as part of the deliverable as set out above.

## How are trade mark and brand rights dealt with?

Material that is potentially covered by trade marks (for example, your business name, product name(s) or other brand-related material) and that is to be incorporated into deliverables will normally be provided by you and will form part of your material as explained above, and you will be responsible for clearing its use as part of any relevant deliverable or otherwise. To the extent that, as part of the services, we help you develop new trade marks or branding, you will be responsible for ensuring that you will be able to use them in the way in which you want to, and for carrying out any necessary trade mark or other searches to ensure that there is no conflict with any other person's trade mark or similar rights. We will not be responsible for clearing any trade mark or similar rights in relation to any deliverables, provided we will not knowingly incorporate into any deliverables any third party's trade marks (other than those forming part of your material), without your prior agreement.

## How long do licences last?

Except to the extent expressly stated otherwise in the engagement letter, all rights and licences granted or procured by either party to or for the other under the engagement letter are non-exclusive and will continue indefinitely, unless terminated in accordance with their terms. Either party may terminate a licence granted by it under this agreement by notice to the party to which the licence was granted, if there is a material breach by the other party of the terms on which the licence was granted.

## What indemnity do we give you?

We will indemnify you against any loss or damage suffered or incurred by you as a result of any claim that the use of or possession by you in accordance with the engagement letter of any deliverable infringes the copyright of any third party, provided that this indemnity will not apply to the extent that the relevant infringement results from:

- Any of your material (including any relevant third-party material) forming part of the relevant deliverable or the authorised use by us of your material.
- The adaptation of any relevant deliverable by anyone other than us.
- The use by you of any third-party material outside the terms of any relevant licence applying to it that has been notified to you.
- Any failure by you to obtain a licence that was your responsibility to obtain (for example, in relation to fonts).

## What indemnity do you give us?

You will indemnify us against any loss or damage suffered or incurred by us as a result of any claim that the use or possession by us in accordance with the engagement letter of any of your material (including any third-party material forming part of your material, as described above) infringes the copyright, trade mark, passing off, or unfair competition rights of any third party.

## How are claims under indemnities to be dealt with?

In relation to any third-party claim to which any of the indemnities referred to above relate, the party claiming the benefit of the indemnity shall:

- Allow the other party on request to conduct the defence of the claim (including settlement).
- Make no admission to the claim without the prior consent of the other party.
- Notify the other party as soon as is reasonably practicable of the claim.
- At the expense of the other party, co-operate and assist to a reasonable extent with the other party's defence of the claim.



# Other terms

## Section 11, Other terms

### How should disputes be resolved?

In the event of any dispute between the parties, then:

- The parties will attend a meeting to attempt to resolve the dispute; unless agreed otherwise between the parties at the time, this meeting will be treated as being conducted on a “without prejudice” and “subject to contract” basis.
- If the parties are unable to resolve the matter via a meeting, then the parties will try and resolve the claim through mediation under the auspices of the Centre for Dispute Resolution (**CEDR**) in London, by reference to the CEDR Model Mediation Procedure, on the basis that the language of the mediation shall be English.

Nothing in this clause shall prevent either party from immediately seeking from a court an interim order restraining the other party from doing any act or compelling the other party to do any act.

### What are the rules about non-solicitation of employees?

Each party shall not during the term of the engagement letter or for a period of six months after the termination date of the engagement letter directly or indirectly:

- Solicit or endeavour to entice away from the other party any **restricted person**.
- Employ or otherwise engage (save in a junior administrative or secretarial capacity) any Restricted Person.

### Can either party assign its rights under the engagement letter?

Neither party may assign or transfer any of its rights or obligations under the engagement letter without the other party’s prior consent.

### Can we sub-contract?

We will not sub-contract the performance of any of our obligations under the engagement letter without your prior consent (not to be unreasonably withheld or delayed). You will be treated as having consented to any sub-contractor specified in the engagement letter. This restriction on sub-contracting will not apply to the use by us for freelance staff (whether they contract directly with us or via a service company), and we will not require your prior consent to contract with them.

## What happens in circumstances beyond a party's control?

Neither party will be liable for any failure (whether complete or partial) or delay in relation to the performance of its obligations under the engagement letter where the failure or delay concerned arises from an event beyond the control of the party concerned. A party wishing to rely on this clause:

- Must take all reasonable steps to avoid or reduce the adverse effects of the relevant event; and
- Must, as soon as reasonably possible, notify the other party in writing of the failure (or potential failure) or delay and the reasons for it, together with an estimate of how long the failure or delay is likely to continue.

If either party fails or delays in the performance of its obligations under the engagement letter due to an event beyond its control and in circumstances in which this clause applies, and the failure or delay continues for a period of 60 days, then either party may until performance resumes in accordance with the engagement letter terminate the engagement letter immediately by notice to the other.

## What other terms apply?

The engagement letter (together with the terms of these terms which are incorporated into it) will set out all the terms that have been agreed between the parties in relation to the subjects covered by it. Subject to *What liability is not subject to exclusions or limitations?* above, no other representations or terms shall apply or form part of the engagement letter.

## Do third parties have any rights in relation to the engagement letter?

No term of the engagement letter is enforceable under the **Contracts (Rights of Third Parties) Act 1999** by a person who is not a party to the engagement letter.

## What law applies to each engagement letter?

The engagement letter (and these general terms) will be governed by English law. Subject to *How should disputes be resolved?* above, both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute under or in relation to the engagement letter.

# Appendix 1: Definitions and interpretation

# Appendix 1: Definitions and interpretation

## Defined terms

Defined terms used are as follows (reference to clauses being to the relevant clauses in the body of these terms:

### Change order

see chapter 3, page 4, *How should changes be made to the services, deliverables or engagement letter?*

### Charges

our charges for the services, as described in the engagement letter

### Claim

the formal assertion of a cause of action by one person (the claimant) against another (the defendant); for the purposes of these terms and the engagement letter, if the same default or series of connected defaults gives rise to more than one cause of action, then all such causes of action will be treated as giving rise to a single claim, even if there is more than one assertion of a cause of action in relation to the defaults concerned; for example, if a given default gives rise to a separate cause of action in breach of contract and in negligence, then both such causes of action will be treated in aggregate as a single claim, even if they are asserted separately

### Contract

the contract between us and you formed by the engagement letter and incorporating the terms of these terms; see chapter 2, page 1, *What is the effect of the engagement letter?*

### Copyright

reference to copyright includes reference to all rights in the nature of copyright, and to database rights

### Default

an act or omission giving rise to one or more causes of action (whether for breach of contract or otherwise)

### Deliverable

see chapter 3, page 3, *What about deliverables?*

### Effective Date

see chapter 2, page 2, *When does each engagement letter come into effect?*

### Engagement Letter

see chapter 2, page 1, *What services do these terms apply to?*

### Font

see chapter 10, page 11, *How are typefaces and fonts dealt with?*

### General Terms of Business

see chapter 1, page 1, *Who are we, and what are these terms about?*

### Good Industry Practice

all relevant practices and professional standards that would be expected of a well-managed expert service provider providing

## Our Background

services like the services, considering factors such as the period over which they are to be provided and the charges

## Material

see chapter 10, page 13, *How is our background material dealt with?*

## Party

either us or you (and **parties** means both us and you)

## Project

the plan for delivery of the services, incorporated into the engagement letter

## Restricted Person

any person who works or has worked with either party in connection with the provision of the services and who:

- Is employed by the party concerned or engaged as a consultant to the party concerned as at the termination date of the relevant engagement letter; or
- Has at any time in the period of six months prior to the termination date of the relevant engagement letter been employed by the party concerned or engaged as a consultant to the party concerned;

in either case otherwise than in a junior administrative or secretarial capacity

## Services

the services to be provided by us to you under an engagement letter, as described in the engagement letter

## Term

see chapter 2, page 2, *How long will each engagement letter last?*

## Termination

see chapter 1, page 2, *How long will each engagement letter last?*

## Third-Party Material

see chapter 10, page 12, *How is third-party material dealt with?*

## Typeface

see chapter 10, page 12, *How are typefaces and fonts dealt with?*

## Working Day

all days other than Saturdays, Sundays and UK bank or public holidays

## Working Hours

9 am to 6 pm on Mondays to Thursdays, and 9 am to 3 pm on Fridays

## Your Material

see chapter 10, page 12, *How is your material dealt with?*

## Other defined terms

The term insolvency event in relation to a person means any of the following events:

- A meeting of creditors of that person being held or an arrangement or composition with or for the benefit of its creditors (including a voluntary arrangement as defined in the Insolvency Act 1986) being proposed by or in relation to that person.
- A charge holder, receiver, administrative receiver or other similar person taking possession of or being appointed over, or any distress, execution or other process being levied or enforced (and not being discharged within seven days) on the whole or a material part of the assets of that person.
- That person ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986 (except that, for the purposes of this agreement, the reference to £750 in section 123(1) of that Act shall be construed as a reference to £10,000).
- That person or its directors or the holder of a qualifying floating charge or any of its creditors giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator.
- A petition being advertised, or a resolution being passed, or an order being made for the administration or the winding-up, bankruptcy or dissolution of that person.
- The happening in relation to that person of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets.

## Interpretation

In these terms and in the engagement letter, unless it says otherwise:

- Paragraph headings in these terms are for ease of reference only, and the headings do not form part of these terms
- Reference to a person includes a legal person (such as a limited company) as well as a natural person.
- Reference to these terms or to the engagement letter includes reference to the appendices and appendices and other documents attached to them or incorporated by reference into them (all as amended or added to from time to time).
- Reference to “including” shall be treated as being by way of example and shall not limit the general applicability of any preceding words.
- Reference to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation.
- Reference to these terms or to the engagement letter shall include reference to them after they have been amended, added to or replaced by new terms or a new agreement or engagement letter (as the case may be).

## No application of your standard terms

Except to the extent that the engagement letter explicitly states otherwise, the terms of these terms are the only ones that will be incorporated into the engagement letter, and none of your standard terms will apply. For example, if you issue a purchase order in relation to any of the services and that purchase order includes or incorporates by reference your standard terms of purchase, then those standard terms of purchase will not apply to the engagement letter or any other agreement between us and you.

## No partnership

Except to the extent expressly stated otherwise, nothing in these terms or in the engagement letter shall create a partnership between the parties or give the rights of a partner to either party.

## Date of last update

These terms were last updated in July 2022 (this is [Edition 1.2](#) of our general terms).

## Appendix 2: Review and approval process

### Are deliverables subject to review?

Defined terms used are as follows (reference to clauses being to the relevant clauses in the body of these terms:

### What is the purpose of the review?

The purpose of the review process is two-fold:

- To enable you to make any reasonable suggestions for amendments to the deliverable which are consistent with the description of the deliverable in the engagement letter; and
- To identify any material defects in the deliverable, so that amendments can be made to correct these.

There is a limit to the number of rounds of review and amendment that may take place other than for the purpose of correcting material defects; this is explained in more detail, below.

### What is the review process?

Once each deliverable has been delivered to you, you will review it; you will complete the review of the deliverable within five working days (or such longer period as is agreed with us) following its delivery. Once you have completed the review, then:

- If you have no amendments to request, and have not identified any unresolved material defects, you will notify us that you approve the deliverable; or
- If you wish to request some amendments; and/or you identify any material defects, then you will notify us accordingly and we will discuss this with you and (subject any agreement arising from that discussion) then have a reasonable period of time (not exceeding ten working days, or such longer period as is agreed with you) to amend the deliverable to implement your request and/or to resolve any material defects, after which we will return the amended deliverable to you for further review.

The cycle of review and amendment outlined above will be repeated until you have no further amendments to request, and no further material defects are identified, after which you will notify us that you are happy with the Deliverable; this is subject to the limits set out below.

## Limits on number of cycles of review and amendment

Unless otherwise agreed with us there will be no more than two cycles of review and amendment for the purpose of allowing you to request amendments other than for the purpose of correcting material defects; if you want to conduct further cycles of review and amendment other than for the purpose of correcting material defects, then we will carry these out at your request but each such further cycle will be subject to an additional charge, to be agreed with you at the time or to be charged on a time and materials basis at our normal rates. The first two cycles of review and amendment will be carried out at no additional charge, regardless of the purpose of the cycles concerned. There is no limit on the number of cycles of review and amendment to the extent that they are for the purpose of correcting material defects; we will carry out as many such cycles of such review and amendment as you request, without additional charge, provided they are limited to correcting material defects.

BOLTER

Thank You